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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

BBK Tobacco & Foods LLP,

No. CV-18-02332-PHX-JAT

**Plaintiff,**

## ORDER

V.

Skunk Incorporated, Vatra Incorporated,  
Defendants.

Pending before the Court is Defendants' Motion to Dismiss. (Doc. 36). The Motion is fully briefed. Defendants sought oral argument on the motion but because both parties submitted memoranda discussing the law and facts in support of their positions and oral argument would not aide the Court's decisional process, the Court did not hold argument on the motion. *See e.g., Partridge v. Reich*, 141 F.3d 920, 926 (9<sup>th</sup> Cir. 1998); *Lake at Las Vegas Investors Group, Inc. v. Pacific Dev. Malibu Corp.*, 933 F.2d 724, 729 (9<sup>th</sup> Cir. 1991).

Defendants' motion can be broken down into three arguments: 1) Plaintiff fails to state a claim under any of its six causes of action<sup>1</sup> primarily because Plaintiff fails to show a likelihood of confusion; 2) Plaintiff fails to state a claim against Defendant Vatra because Plaintiff fails to make any allegations against Defendant Vatra beyond the allegations

<sup>1</sup> The six causes of action pleaded in the complaint are: (1) trademark infringement under the Lanham Act; (2) false designation of origin under the Lanham Act; (3) trademark infringement under Arizona common law; (4) unfair competition under Arizona common law; (5) cancellation of a trademark registration; and (6) refusal of trademark application. (Doc. 39 at 2).

1 against Defendant Skunk; and 3) if the Court denies the motion(s) to dismiss for failure to  
2 state a claim, Defendants seek a more definite statement. The Court will address each  
3 argument in turn.

4 **I. Factual Background**

5 The following summary of the facts is taken from the complaint. The Court notes  
6 that Defendants dispute many of these facts; but, in deciding a motion to dismiss for failure  
7 to state a claim, the Court must construe the facts alleged in the complaint in the light most  
8 favorable to the Plaintiff and the Court must accept all well-pleaded factual allegations as  
9 true. *See Shwarz v. United States*, 234 F.3d 428, 435 (9th Cir. 2000).

10 Plaintiff uses the Skunk and Skunk Brand names to identify various smoking-related  
11 accessories. (Doc. 1 at 3, ¶ 19). Plaintiff has used the Skunk Brand trademark since 1999.  
12 (Doc. 1 at 3-4, ¶ 21a). Plaintiff has secured several U.S. Patent and Trademark Office  
13 trademark registrations of Plaintiff's Skunk and Skunk Brand marks for smoking-related  
14 accessories. (Doc. 1 at 3-4, ¶¶ 21-24).

15 Plaintiff alleges that Defendants sell smell-proof bags using the "Skunk" name.  
16 (Doc. 1 at 6, ¶ 31). Plaintiff alleges that Defendants use a design image of a skunk's tail  
17 on Defendants products. (Doc. 1 at 6, ¶ 34). Plaintiff alleges that Defendants sell the  
18 smell-proof bags, including "vape cases", to purchasers of smoking-related products.  
19 (Doc. 1 at 6, ¶ 38). Plaintiff alleges that Defendants were advertisers/exhibitors at the  
20 Champs Tradeshow in Las Vegas, Nevada, in July 2018. (Doc. 1 at 6, ¶¶ 40-41), and at  
21 two other tradeshows thereafter (Doc. 1 at 6-7, ¶¶ 43-44).

22 **II. Motion to Dismiss the Six Claims in the Complaint**

23 **A. Failure to State a Claim**

24 The Court may dismiss a complaint for failure to state a claim under Federal Rule  
25 of Civil Procedure 12(b)(6) for two reasons: 1) lack of a cognizable legal theory and 2)  
26 insufficient facts alleged under a cognizable legal theory. *Balistreri v. Pacifica Police*  
27 *Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

28 To survive a 12(b)(6) motion to dismiss for failure to state a claim, a complaint must

1 meet the requirements of Federal Rule of Civil Procedure 8(a)(2). Rule 8(a)(2) requires a  
2 “short and plain statement of the claim showing that the pleader is entitled to relief,” so  
3 that the defendant has “fair notice of what the . . . claim is and the grounds upon which it  
4 rests.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v.*  
5 *Gibson*, 355 U.S. 41, 47 (1957)).

6       Although a complaint attacked for failure to state a claim does not need detailed  
7 factual allegations, the pleader’s obligation to provide the grounds for relief requires “more  
8 than labels and conclusions, and a formulaic recitation of the elements of a cause of action  
9 will not do.” *Twombly*, 550 U.S. at 555 (internal citations omitted). The factual allegations  
10 of the complaint must be sufficient to raise a right to relief above a speculative level. *Id.*  
11 Rule 8(a)(2) “requires a ‘showing,’ rather than a blanket assertion, of entitlement to relief.  
12 Without some factual allegation in the complaint, it is hard to see how a claimant could  
13 satisfy the requirement of providing not only ‘fair notice’ of the nature of the claim, but  
14 also ‘grounds’ on which the claim rests.” *Id.* (citing 5 C. Wright & A. Miller, *Federal*  
15 *Practice and Procedure* §1202, pp. 94, 95 (3d ed. 2004)).

16       Rule 8’s pleading standard demands more than “an unadorned, the-defendant-  
17 unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing  
18 *Twombly*, 550 U.S. at 555). A complaint that offers nothing more than naked assertions  
19 will not suffice. To survive a motion to dismiss, a complaint must contain sufficient factual  
20 matter, which, if accepted as true, states a claim to relief that is “plausible on its face.”  
21 *Iqbal*, 556 U.S. at 678. Facial plausibility exists if the pleader pleads factual content that  
22 allows the court to draw the reasonable inference that the defendant is liable for the  
23 misconduct alleged. *Id.* Plausibility does not equal “probability,” but plausibility requires  
24 more than a sheer possibility that a defendant has acted unlawfully. *Id.* “Where a  
25 complaint pleads facts that are ‘merely consistent’ with a defendant’s liability, it ‘stops  
26 short of the line between possibility and plausibility of entitlement to relief.’” *Id.* (citing  
27 *Twombly*, 550 U.S. at 557).<sup>2</sup>

28 <sup>2</sup> In the section of Defendants’ motion seeking a more definite statement, Defendants,  
without supporting legal authority, argue that the heightened pleading standard under

1 In this case, Defendants argue:

2 Lanham Act Section 32 for registered marks and 43(a) for unregistered ones  
3 prohibit the use of a mark that is likely to cause confusion. 15 U.S.C. §§  
4 1114, and 1125(a); *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763  
5 (1992) (“[L]iability under § 43(a) requires proof of the likelihood of  
6 confusion.”). Thus, in order to assert a valid trademark infringement claim,  
7 Plaintiff BBK’s Complaint is required to state the following allegations with  
8 the requisite specificity: (1) Plaintiff owns a valid, protectable trademark;  
9 and (2) Defendant SKUNK uses a mark similar to Plaintiff’s brand and Mark  
10 without the consent of Plaintiff in a manner that is likely to cause confusion  
11 among ordinary consumers as to the source, sponsorship, affiliation, or  
12 approval of the goods. *Dep’t of Parks & Recreation v. Bazaar Del Mundo*  
13 *Inc.*, 448 F.3d 1118, 1124 (9th Cir. 2006). Here, the Complaint does not  
14 adequately allege sufficient facts establishing a plausible likelihood of  
15 confusion.

(Doc. 36 at 8-9).

16 Plaintiff states:

17 As stated in the Defendants’ Motion, the six causes of action in the Complaint  
18 are share common elements. Motion at 9. *See also, e.g., Interstellar Starship*  
19 *Servs. Ltd. v. Epix, Inc.*, 184 F.3d 1107, 1110 (9th Cir.1999) (The ultimate  
20 test for unfair competition is exactly the same as for federal trademark  
21 infringement, that is “whether the purchaser is likely to be deceived or  
22 confused by the similarity of the marks.”).

(Doc. 39 at 6, n. 5).

23 Thus, the parties agree that the issue is whether Plaintiff has adequately alleged  
24 “likelihood of confusion” to state a claim. The Ninth Circuit Court of Appeals has  
25 identified eight nonexclusive factors the Court should consider in determining whether  
26 consumer confusion is likely: (1) the strength of the plaintiff’s mark; (2) the proximity or  
27 relatedness of the goods; (3) the similarity of the marks; (4) evidence of actual confusion;  
28 (5) marketing channels used; (6) the type of goods and likely degree of purchaser care; (7)  
defendant’s intent in selecting the mark; (8) likelihood of expansion of the product lines.  
*AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348–49 (9th Cir. 1979) (“Sleekcraft factors”).  
Plaintiff need not allege, or prove, every Sleekcraft factor. *See Brookfield Commc’ns v.*

Federal Rule of Civil Procedure 9(b) should apply to Plaintiff’s willful infringement claim  
because “[s]uch allegations sound in the tort of fraud....” (Doc. 36 at 12). This argument  
has been rejected by other courts in the patent context. *Potter Voice Techs., LLC v. Apple*  
*Inc.*, 24 F. Supp. 3d 882, 887 (N.D. Cal. 2014) (“While willful infringement is not equal to  
fraud and therefore is not subject to the stringent Rule 9(b) particularity requirement, the  
*Iqbal* and *Twombly* standards still apply. *See Mitutoyo Corp. v. Cent. Purchasing LLC*, 499  
F.3d 1284, 1290 (Fed. Cir. 2007).”). This Court agrees that a claim of willful infringement  
is not required to be pleaded under Federal Rule of Civil Procedure 9(b).

1       West Coast Entertainment Corp., 174 F.3d 1036, 1054 (9th Cir. 1999).

2           In the motion to dismiss, Defendants argue Plaintiff fails to allege 3 of these factors:  
3       3) similarity of the marks (Doc. 36 at 7); 5) marketing channels used (Doc. 36 at 10); and  
4       6) type of goods (Doc. 36 at 10). In the reply, Defendants argue Plaintiff fails to allege 2  
5       additional factors: 4) actual confusion (Doc. 41 at 7-8); and 7) defendant's intent in  
6       selecting the mark (Doc. 41 at 9). In reading Defendants' motion and reply as a whole, the  
7       Court notes that Defendants do not actually dispute whether Plaintiff has made an  
8       allegation as to each of the factors, but rather whether that allegation is plausible.

9           **1.       Factor 3**

10          As to factor 3 — the similarity of the marks — Defendant Skunk includes pictures  
11       of the marks and argues that there are 2 visual differences: 1) one mark has a sketch of a  
12       whole skunk, while one has only a sketch of a skunk's tail; and 2) one uses double white-  
13       and-black fonts for the term skunk, while one uses only a single black font. (Doc. 36 at 7).  
14       Defendant Skunk then concludes: "These visual differences are so great on their face that  
15       it cannot reasonably be contended that they would cause confusion in the minds of ordinary  
16       consumers as to the source, sponsorship or affiliation of the parties' respective products."  
17       (Doc. 36 at 7-8).

18          Conversely, Plaintiff argues: "An allegation of identical word marks unequivocally  
19       satisfies the pleading standard for the similarity of trademarks in a trademark infringement  
20       action. *See Hokto Kinoko Co. v. Concord Farms, Inc.*, 738 F.3d 1085, 1096 (9th Cir.  
21       2013)." (Doc. 39 at 9).<sup>3</sup> As to factor 3 — similarity of the marks — the Court finds  
22       Plaintiff has stated a plausible claim of similarity. Specifically, the marks use the exact  
23       same word as a name and a similar skunk tail drawing. These seemingly admitted facts  
24       are adequate to state a claim as to factor 3.

25           **2.       Factor 5**

26          As to factor 5 — marketing channels used — Defendants acknowledge in their

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28       <sup>3</sup> The Court will address Defendant Vatra's separate motion to dismiss below. However,  
         the Court notes that for purposes of this factor, these allegations appear to relate to only  
         Defendant Skunk.

1 motion that “the trademark owner’s channels of trade” is relevant to whether there is a  
2 likelihood of confusion. (Doc. 36 at 10, line 5). However, Defendants make no specific  
3 argument in this regard beyond their discussion of factor 6, addressed below.

4 Conversely, Plaintiff has alleged that Plaintiff and both Defendants attended three  
5 of the same tradeshows. (Doc. 1 at 6-7, ¶¶ 40-44). Thus, Plaintiff has alleged that all  
6 parties use the same marketing channels sufficient to state a claim as to factor 5.

7 **3. Factor 6**

8 As to factor 6 — types of goods — Defendant Skunk claims that its smell-proof  
9 bags are not the same product as anything sold by Plaintiff. (Doc. 36 at 10). Defendant  
10 Skunk claims that the “vape cases” alleged in the complaint are Defendant Vatra’s  
11 products, not Defendant Skunk’s products. (Doc. 36 at 10, n. 2 (citing Exhibit G to the  
12 complaint (Doc. 1-2 at 2-3)). No party alleges or denies that Defendant Vatra’s products  
13 include Defendant Skunk’s mark. The Court has reviewed Exhibit G and has not located  
14 Defendant Skunk’s mark on any of the products.

15 Even assuming none of the products in Exhibit G are Defendant Skunk’s products,  
16 Plaintiff still alleges that Defendant Skunk sells a smell-proof bag bearing the Skunk mark.  
17 (Doc. 1 at 6, ¶ 32). Plaintiff also alleges that Defendant Skunk advertises the bag to cancel  
18 out the aroma of the contents of the bag (Doc. 1 at 6, ¶ 37), and Defendant Skunk promotes  
19 the smell-proof bag at tradeshows for smoking related products (Doc. 1 at 6, ¶ 39). Plaintiff  
20 further alleges that Plaintiff sells containers for smoking related products. (Doc. 1 at 5, ¶  
21 23).<sup>4</sup>

22 The Court finds these allegations of selling containers for smoking related products  
23 to be sufficient to have alleged that the products are related. While the Court notes that  
24 Defendant Skunk argues that it makes odor free bags for purposes other than smoking

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26 <sup>4</sup> In response to the motion to dismiss, Plaintiff claims it sells an odor free bag, but has no  
27 citation for this factual claim; as a result, the Court has not considered it. (Doc. 39 at 12,  
28 line 20). Nonetheless, Defendant Skunk seems to concede Plaintiff does make a container;  
specifically, Defendant Skunk states: “However, Defendant SKUNK’s bag products are  
made out of [] synthetic fabrics, while Plaintiff’s alleged container-type products appear to  
be made out of thin plastic.” (Doc. 41 at 6).

1 related products,<sup>5</sup> Plaintiff's allegation that Defendant Skunk makes odor free bags for  
2 smoking related products is sufficient to state a claim as to factor 6.

3           **4. Factor 4**

4           As to factor 4 — actual confusion — Defendants argue that Plaintiff has produced  
5 no evidence of actual consumer confusion. (Doc. 41 at 8, lines 11-12). However, Plaintiff  
6 is not required to produce evidence at the motion to dismiss for failure to state a claim  
7 stage.

8           Because this argument was raised for the first time in the reply, Plaintiff did not  
9 address it in the response. Further, because this argument was raised for the first time in  
10 the reply, this Court need not consider it. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2  
11 (9th Cir. 2009) (declining to consider a matter on appeal that was “not specifically and  
12 distinctly raised and argued in [a party’s] opening brief”); *Kim v. Kang*, 154 F.3d 996, 1000  
13 (9th Cir. 1998) (“[I]t would be especially unfair for us to consider an argument that was  
14 raised for the first time in the reply brief.”).

15           Nonetheless, the Court notes that the complaint alleges, “Upon information and  
16 belief, Defendants use of the Skunk name for Defendants’ ‘smell proof’ bag products is  
17 reasonably likely to cause consumers and potential customers to believe that Defendants’  
18 ‘smell proof’ bag products using the ‘Skunk’ name are associated with HBI when, in fact,  
19 Defendants’ products are not.” (Doc. 1 at 8, ¶ 52). This allegation is adequate to state a  
20 claim as to factor 4.

21           **5. Factor 7**

22           As to factor 7 — defendant’s intent in selecting the mark — Defendant Skunk  
23 summarizes Plaintiff’s allegations as: “Plaintiff asserts that Defendant SKUNK willfully  
24 caused confusion and deception to the public by manufacturing and promoting the products  
25 “bearing the mark ‘Skunk’ or variants thereof [which] have their source or origin with  
26 [BBK] or are in some manner approved by, associated with, sponsored by or connected

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27  
28           <sup>5</sup> Specifically, Defendant Skunk states, “Defendant SKUNK’s bags and related goods are  
not exclusively intended to be used for tobacco and similar substances.” (Doc. 41 at 5)  
(emphasis added).

1 with [BBK].” [See Complaint, at Para. 54-62.]” (Doc. 41 at 9). Defendant Skunk then  
2 argues, “Nothing could be further from the truth.” (Doc. 41 at 9).

3 However, on a motion to dismiss for failure to state a claim, the Court does not test  
4 the “truth” of the allegations. Instead, the Court considers whether Plaintiff has made a  
5 plausible allegation that, if later proven true, would entitle Plaintiff to relief. *See Twombly*,  
6 550 U.S. at 555.

7 Because Defendant Skunk raised this argument for the first time in the reply, as  
8 stated above, the Court need not consider it. Nonetheless, the Court finds that Plaintiff has  
9 alleged that Defendant Skunk’s choice of mark originated from Plaintiff’s mark, which is  
10 sufficient to state a claim under factor 7.

11 **B. Conclusion Regarding Failure to State a Claim**

12 The Court has considered all of the *Sleekcraft* factors argued by Defendants and  
13 finds that, as to Defendant Skunk, Plaintiff has made allegations sufficient to state a claim  
14 as to each factor. Accordingly, the motion to dismiss Defendant Skunk will be denied.<sup>6</sup>

15 **III. Motion to Dismiss Defendant Vatra**

16 **A. Allegations as to Defendant Vatra**

17 Defendants argue that Plaintiff has not pleaded any specific facts or allegations  
18 against Defendant Vatra. (Doc. 36 at 7-8). Plaintiff counters and says:

19 Every allegation in the Complaint alleging wrongful conduct is  
20 asserted against *both* Defendant Vatra and Defendant Skunk. *See* Complaint,  
21 *passim*. The first sentence of the Complaint defines “Defendants” as used in  
22 the Complaint to mean Defendants Vatra and Skunk. Complaint at p. 1. All  
23 the alleged wrongful conduct in the Complaint relates to *both* Defendants  
24 Vatra and Skunk. *See* Complaint, *passim*. *See* Complaint at ¶¶ 32, 38, 39, 40,  
25 Exhibits G-H.

26 (Doc. 39 at 15) (emphasis in original).

27 To state a claim against multiple defendants, a plaintiff cannot use a “shotgun”  
28 pleading approach by lumping all defendants together. As another court has explained:

29 Related to plausibility and particularity is the concept of shotgun pleading.

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30 <sup>6</sup> Plaintiff asks the Court to take judicial notice of certain documents filed with the  
31 Trademark Trial Appeal Board. (Doc. 39 at 3-4). Defendants opposed this request. (Doc.  
32 41 at 2-3). Because the Court could decide this motion without reference to these  
33 documents, the Court has not considered them.

1           Shotgun pleadings are pleadings that overwhelm defendants with an unclear  
2 mass of allegations and make it difficult or impossible for defendants to make  
3 informed responses to the plaintiff's allegations. They are unacceptable. One  
4 common theme of Rule 8(a), Rule 9(b), *Iqbal*, *Twombly*, and federal  
5 securities laws on pleading is that plaintiffs must give the defendants a clear  
6 statement about what the defendants allegedly did wrong.  
7

8           ...  
9           One common type of shotgun pleading comes in cases with multiple  
10 defendants where the plaintiff uses the omnibus term "Defendants"  
11 throughout a complaint by grouping defendants together without identifying  
12 what the particular defendants specifically did wrong. Another type is where  
13 the plaintiff recites a collection of general allegations toward the beginning  
14 of the Complaint, and then "each count incorporates every antecedent  
15 allegation by reference [.]" *Byrne*, 261 F.3d at 1129.

16           8           *Sollberger v. Wachovia Sec., LLC*, No. SACV 09-0766AGANX, 2010 WL 2674456, at \*4  
17 (C.D. Cal. June 30, 2010). Thus, "Plaintiff is advised that in order to state a claim, he must  
18 allege specific facts as to each defendant indicating what specific conduct they engaged in  
19 that caused injury to Plaintiff and when they did so." *Cruz v. Gipson*, No. 1:14-CV-00418-  
20 BAM-PC, 2015 WL 6689550, at \*4 (E.D. Cal. Oct. 30, 2015).

21           In this case, as indicated above, Plaintiff engaged in the shotgun approach by  
22 making every allegation against both Defendants. However, the Court has reviewed, for  
23 example, Exhibit G which purports to be Defendant Vatra's website displaying products  
24 for sale. (Doc. 1-8 at 2-3). The Court sees no evidence of the Skunk mark or the word  
25 skunk on any of the products.<sup>7</sup> Thus, to the extent the Court has found that the allegations  
that Defendant Skunk uses the word Skunk and uses the skunk character state a claim, these  
allegations do not appear to have any applicability to Defendant Vatra's products.

26           Further, the Court has found no cognizable legal theory in the complaint that would  
27 make Defendant Vatra liable for the activities of Defendant Skunk. Plaintiff's allegation  
28 that "Upon information and belief, Defendants Vatra, Inc. and Skunk, Inc. are related  
entities that share a common ownership and/or organizational structure[,"] (Doc. 1 at 2,  
¶4.) even if true, fails to allege a basis for joint liability. Further, the allegation that the  
Defendants shared a booth at a tradeshow, even if true, is not a basis for joint liability. (See

27           <sup>7</sup> There is the Skunk name and tail on the blue bar at the top of the second page of this  
28 screen capture. (Doc. 1-8 at 3). However, there is no allegation that this bar causes Vatra  
liability for non-Skunk branded products or, alternatively, joint liability for Skunk branded  
products.

1 Doc. 1-9 at 14).

2 Thus, on this record, Plaintiff has failed to state a claim against Defendant Vatra.

3 **B. Leave to Amend**

4 The Ninth Circuit Court of Appeals has instructed district courts to grant leave to  
5 amend, *sua sponte*, when dismissing a case for failure to state a claim, “unless [the court]  
6 determines that the pleading could not possibly be cured by the allegation of other facts.”  
7 *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (quoting *Doe v. United*  
8 *States*, 58 F.3d 494, 497 (9th Cir. 1995)). Here, the Court cannot conclude that no facts  
9 could be alleged against Defendant Vatra that would state a claim. Therefore, the Court  
10 will grant Plaintiff leave to amend.

11 The Court notes that:

12 Any amended complaint will supersede the original complaint, *Lacey*  
13 *v. Maricopa County*, 693 F. 3d 896, 907 n.1 (9th Cir. 2012) (en banc), and it  
14 must be complete on its face without reference to the prior, superseded  
15 pleading [citation omitted]. Once an amended complaint is filed, the original  
complaint no longer serves any function in the case. Therefore, in an  
amended complaint, as in an original complaint, each claim and the  
involvement of each defendant must be sufficiently alleged.

16 *Grady v. Gutierrez*, No. 1:18-CV-00922-JDP, 2019 WL 1643238, at \*5 (E.D. Cal.  
17 Apr. 16, 2019).

18 Accordingly, if Plaintiff chooses to amend within the deadlines set forth below,  
19 Plaintiff must re-allege all claims and allegations against Defendant Skunk, in addition to  
20 any claims and allegations against Defendant Vatra.

21 **IV. Motion for More Definite Statement**

22 As to Defendant Skunk, the Court finds that the allegations have been adequately  
23 pleaded such that a more definite statement is not required. This conclusion is particularly  
24 true given that Defendants largely premised their argument for a more definite statement  
on their theory that Plaintiff was required to satisfy the pleading requirements of Federal  
26 Rule of Civil Procedure 9(b), which the Court rejected. See footnote 2 *supra*. As to  
27 Defendant Vatra, because it is being dismissed, the request for more definite statement is  
28 moot.

## V. Conclusion

Based on the foregoing,

**IT IS ORDERED** that the motion to dismiss (part of Doc. 36) is denied as to Defendant Skunk and granted as to Defendant Vatra.<sup>8</sup>

**IT IS FURTHER ORDERED** that the motion for more definite statement (part of Doc. 36) is denied as to both Defendants.

**IT IS FURTHER ORDERED** that the request to take judicial notice (part of Doc. 39) is denied as moot.

**IT IS FURTHER ORDERED** that leave to amend is granted such that Plaintiff may, if it chooses, file an amended complaint within 14 days of this Order.

**IT IS FINALLY ORDERED** that Defendant(s) must answer or otherwise respond to the complaint (if no amended complaint is filed) or the amended complaint (if an amended complaint is filed) within 28 days of the date of this Order.

Dated this 30th day of April, 2019.

  
James A. Teilborg  
Senior United States District Judge

<sup>8</sup> The Clerk of the Court shall not enter judgment at this time.